IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH JAIPUR.

ORDER
In
S.B. Company Petition No. 03 of 2006

IN THE MATTER OF THE COMPANIES ACT 1956
AND
IN THE MATTER OF SECTION 391 AND SECTION 394 OF THE COMPANIES ACT 1956
AND
IN THE MATTER OF SCHEME OF ARRANGEMENT
BETWEEN

Sutlej Industries Limited
..... Petitioner Company No.1
Sutlej Textiles and Industries Ltd.
..... Petitioner Company No.2

Date of Order : May 12, 2006

P R E S E N T

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Paras Kuhad for the petitioners.
Mr. V.K. Khubchandani, Official Liquidator appeared in person.

BY THE COURT

The petitioner Companies i.e. Sutlej Industries Limited and Sutlej Textiles and Industries Ltd. filed the present petition under Sections 391(2) and 394 of the Companies Act seeking approval of the scheme of

arrangement so as to be binding upon all the shareholders, secured and unsecured creditors.

2. This Court on January 25, 2006, issued notice of this petition to the Regional Director Northern Region, Ministry of Company Affairs, NOIDA (UP) and also directed for publication of the same in two Newspapers- Rajasthan Patrika Kota Edition and the Times of India, Jaipur Edition. The hearing of the petition was notified to be March 8, 2006.

3. The notices were sent for publication on Feb. 6,2006 to the Editors of Rajasthan Patrika and Times of India. The notice in the Rajasthan Patrika was published on Feb. 11, 2006, whereas it was published in the Times of India on Feb. 10,2006. In response to the notice the Regional Director sent his affidavit/ objections to the sanction of scheme of Arrangement between the petitioners through Official Liquidator..

4. The Regional Director in relation to clause 2(a) of Part II of the Scheme of Arrangement stated that "all the Permanent employees of the Transferor Company engaged in the "Textile Division" shall become the employees of the Transferee Company without any break or interruption in their services." In relation to para 9.9 of Part III of the Scheme, the Regional Director stated that "In case any capital reserve arises pursuant to clause 9.7, the same shall be treated as free reserves of STIL. The Regional Director took objection that this scheme does not seem to be in conformity with the provisions of the Companies Act, 1956 as well as normally accepted accounting principles, since surplus arising out of the Scheme Arrangement i.e. Arrangement/ amalgamation reserve is of capital nature and can not be considered as general reserve as the same is free for distribution to the

shareholders of a company in the form of dividend/bonus shares, whereas 'arrangement/ amalgamation reserve' cannot be utilised for distribution to the shareholders.

5. It appears that Petitioner No.1 is a listed Company engaged mainly in the business of manufacturinbg and dealing in cotton and synthetic yarns and fabrics. The petitioner/transferor Company has an authorised share capital of Rs. 15,00,00,000 divided into 1,50,00,000 Equity Shares of Rs. 10/- each and 10,00,00,000 Preference shares of Rs. 10 each. The issues, Subscribed and Paid up share capital of the Company is 10,59,58,600 divided into 1,05,95,860 Equity shares of Rs. 10 each fully paid up and Rs. 106,170 towards amount originally paid up in respect of the 35,390 forfeited Equity Shares of Rs. 10/- each. The transferee Company has an authorised share capital of rupees one crore only. All the shares issued by the Transferee company are held by Sutlej Industries Limited. The petitioner transferee Company is a wholly owned subsidiary of the petitioner Transferor Company.

6. The petitioner Companies have sought approval of Scheme on the following grounds -

(a) The proposed arrangement would result in enhanced operational focus.

(b) The arrangement would result in the optimum utilisation of available resources. This would help in reducing the operating and administrative cost and thus would enable the petitioner company to meet its business requirements in an efficient manner.

(c) Economies of scale and operational synergy will obviate duplication of efforts.

(d) The arrangement will result in improved asset base, and enable the company to raise resources for future growth and expansion of the business.

(e) Shareholders will be able to capture the true intrinsic value of their shares.

(f) Future business directions of manufacturing business and service business indicate areas of divergence in growth of profiles and product offerings, segregation of these businesses therefore in different companies would create two independent focused entities having necessary flexibility to pursue their individual growth strategies.

(g) Enable the management of the two companies to focus on their individual operations resulting into reduction in overall costs of managements and operations."

8. The petitioner Companies vide Company Application No. 74/2005 sought direction for convening holding and conducting of separate meetings of the Preference Shareholders and Secured Creditors of the petitioner Transferor Company. In the said application dispensation of convening of the meetings of the Equity Shareholders and Unsecured Creditors of the Petitioner Transferor Company and Equity Shareholders of the Petitioner/Transferee Company was requested in view of the fact that the all Equity Shareholders and Unsecured Creditors of the petitioner Company have agreed in writing to the said Scheme and given their consent for the waiver from holding the meetings. By the order of this Court dated November 17, 2005, in the Company Application No. 74 of 2005 directed the petitioner Transferor Company to convene meetings of the Preference Shareholders and Secured Creditors of the Company for the purpose of considering and, if thought fit approving with or without modifications, the said Scheme of Arrangement and the said order directed that Shri Manoj

Pareek Advocate should act as Chairman of the said meetings and should report the result thereof to this court. This Court dispensed with the holding of the meetings of Equity Shareholders and Unsecured Creditors of petitioner Transferor Company as well as meeting of the Equity Shareholders of petitioner Transferee company. In response to this Court's order dated November 17, 2005, in the meeting of the Preference Shareholders of Petitioner/Transferor Company, 61 shareholders personally or through proxy having total value of their share of Rs. 8,24,91,670/- were present. The Scheme of Arrangement was read and explained by Chairman, and the meeting unanimously approved the said Scheme of Arrangement. The meeting of Secured creditor of Petitioner Transferor Company was attended by 9 Secured Creditors having total value of their debt as Rs. 351,09,62,426/-. The arrangement was read and explained by the Chairman to the meeting and the meeting unanimously approved the said Scheme of Arrangement.

9.. The Official Liquidator has submitted affidavit of Rakesh Chandra , the Regional Director stating therein as under -

(i) That the Deponent craves leave to submit that as per clause 2 (a) of Part II of the Scheme of Arrangement all the Permanent employees of the Transfer Company engaged in the "Textile Division" shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme of Arrangement by Hon'ble Court. (Para3)

(ii) That the Deponent further craves leave to submit that Para 9.9 of Part III of the Scheme provides as under :

"In case any capital reserve arises pursuant to clause 9.7 above, the same shall be treated as free reserves of STIL."

(Para 4)

(iii) It is submitted that the aforesaid para of the scheme does not seem to in conformity with the provisions of the Companies Act, 1956 as well as normally accepted accounting principles, since surplus arising out of the Scheme of Arrangement i.e. “arrangement/ amalgamation reserve” is of capital nature and can not be consdiered as general reserve as the same (general reserve) is free for distribution to the Shareholders of a company in the form of dividend/bonus shares, whereas “arrangement/amalgamation reserve' can not be utilized for distribution to the Shareholders. It is therefore, submitted that the aforesaid clause may be not be allowed by this Hon'ble Court. (Para 4.1)

(iv) That it is submitted that the Hon'ble Court may kindly consider the submissions made in Para 4.1 herein above and decide the case on its merits.” (Para 5)

11. The contention of Regional Director that `arrangement/amalgamation scheme' cannot be utilised for distribution to the shareholders, was not objected to by the shareholders and the meeting of shareholders unanimously approved the scheme of Arrangement. I therefore do not see good reason to exclude para 9.9 of Part III of the the Scheme. Broadly the Scheme appears to be fair reasonable, according to law and in the interest of Shareholders.

12. For these reasons the petition stands allowed and the Scheme of Arrangement is sanctioned in terms of prayer (a). Costs of Rs. 2500/- to the Official Liquidator to be paid by the petitioner Company within two weeks from today. Certified copy of this order may be filed with the Registrar of Companies within 14 days from this date.

(SHIV KUMAR SHARMA)J.

Pareek/